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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,563	07/11/2001	Sei Kato	Q65368	4811
7590 01/26/2005			EXAMINER	
SUGHRUE MION ZINN MACPEAK & SEAS, PLLC			KIM, KEVIN	
2100 Pennsylvania Avenue, NW			ART UNIT	
Washington, DC 20037-3213			PAPER NUMBER	
			2634	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/901,563

Applicant(s)

KATO, SEI

Examiner

Kevin Y Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 July 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites “a receiver for receiving digital broadcasts of a plurality of ensembles and one ensemble including a plurality of services.” Here, “one ensemble” is clearly defined to have a plurality of services whereas it is not clear what are included in “a plurality of ensembles.” And yet, at line 13, “*said* services belonging to said ensembles” is recited. Emphasis added. Therefore, the identity of “said services” at line 13 is ambiguous. It appears that “said” in “said services” should be removed to differentiate “said services” included in “one ensemble.”

In addition, “an error rate comparing part” is recited to compare “a *value* detected by said error rate detection part” whereas the error rate detection part detects “an error rate.” Therefore, because of the use of different terms, it is not clear whether “a value” refers back to “an error rate” or some other characteristics. It appears that “a value” was meant to refer to “an error rate” since the error rate is the only characteristic detected by the error detecting part.

Last, the role of the limitation “based on a compared result by said error rate comparing part” is not understood for performing “at least one of said search operation and said preset operation” since the search or present operation is performed “for said services belonging to said

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ensembles containing a service with a low error rate with satisfies said predetermined value.” In other words, the search or present operation does not appear to be “based on a compared result by said error rate detection part” because it is performed for services belonging to said ensembles containing a service with a low error rate with satisfies said predetermined value, which has no bearing on the “error detection part.”

Similarly, in claim 2, “an error rate comparing part” is recited to compare “*values* detected by said error rate detection part” whereas the error rate detection part detects “an error rate.” Therefore, because of the use of different terms, it is not clear whether “values” refers back to “an error rate” or some other characteristics. It appears that “a value” was meant to refer to “an error rate” since the error rate is the only characteristic detected by the error detecting part.

Like claim 1, the role of the limitation “based on a compared result by said error rate comparing part” is not understood for performing “at least one of said search operation and said preset operation” since the search or present operation is performed “while a higher priority --- a higher error rate.” In other words, the search or present operation does not appear to be “based on a compared result by said error rate detection part” contrary to such a limitation.

Claim 5 recites “a receiver for receiving digital broadcasts of a plurality of ensembles and one ensemble including a plurality of services.” Here, “one ensemble” is clearly defined to have a plurality of services whereas it is not clear what are included in “a plurality of ensembles.” And yet, at line 13, “*said* services belonging to said ensembles” is recited. Emphasis added. Therefore, the identity of “said services” at line 13 is ambiguous. It appears that “said” in “said services” should be removed to differentiate “said services” included in “one ensemble.”

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In addition, “a reception level comparing part” is recited to compare “a *value* detected by said reception level detecting part” whereas the reception level detection part detects “a reception level.” Therefore, because of the use of different terms, it is not clear whether “a value” refers back to “a reception level” or some other characteristics. It appears that “a value” was meant to refer to “a reception level” since the reception level is the only characteristic detected by the reception level detecting part.

Last, the role of the limitation “based on a compared result by said reception level comparing part” is not understood for performing “at least one of said search operation and said preset operation” since the search or present operation is performed “for said services belonging to said ensembles containing a service with a high reception level which satisfies said predetermined reference value.” In other words, the search or present operation does not appear to be “based on a compared result by said reception level detection part” because it is performed for services belonging to said ensembles containing a service with a high reception level which satisfies said predetermined reference value, which has no bearing on the “reception level detection part.”

Similarly, in claim 6, “a reception level comparing part” is recited to compare “*values* detected by said error rate detection part” whereas the reception level detection part detects “a reception level.” Therefore, because of the use of different terms, it is not clear whether “values” refers back to “a reception level” or some other characteristics. It appears that “a value” was meant to refer to “a reception level” since the reception level is the only characteristic detected by the reception level detecting part.

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Like claim 5, the role of the limitation "based on a compared result by said reception level comparing part" is not understood for performing "at least one of said search operation and said preset operation" since the search or present operation is performed " while a higher priority ---- a higher error rate." In other words, the search or present operation does not appear to be "based on a compared result by said reception level detection part" contrary to such a limitation.

***Allowable Subject Matter***

3. Claims 1-8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Y Kim whose telephone number is 571-272-3039. The examiner can normally be reached on 8AM --5PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on 571-272-3056. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Lan Kim*

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